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No. 09-1138

IN THE

Supreme Court of the United States

TAM TRAVEL, INC., *et al.*,

Petitioners,

v.

AMERICAN AIRLINES, INC., *et al.*,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court of Appeals
for the Sixth Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly applied this Court's decision in *Bell Atlantic Corp.* v. *Twombly*, 550 U.S. 544 (2007), when it held that petitioners' first amended complaint did not state a claim for violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 because the facts alleged did not plausibly suggest (and were merely consistent with) an agreement among airlines to cut and eliminate commissions paid to travel agents.

2. Whether under 11 U.S.C. § 1141(d)(1) confirmation of a defendant's bankruptcy plan discharges an antitrust claim that is predicated on pre-confirmation conduct.

RULE 29.6 STATEMENT

Respondent American Airlines, Inc. is a subsidiary of AMR Corporation, a publicly held company; no other publicly held company holds 10% or more of its stock.

Respondent Continental Airlines, Inc. is a publicly held company in which no publicly held company holds 10% or more of its stock.

Respondent United Air Lines, Inc. is a wholly owned subsidiary of UAL Corporation, a publicly held company.

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BRIEF FOR RESPONDENTS IN OPPOSITION

Respondents American Airlines, Inc., Continental Airlines, Inc., and United Air Lines, Inc. (collectively, "respondent airlines") respectfully submit this brief in opposition to the petition for a writ of certiorari.[1]

STATEMENT

Petitioners are forty-eight travel agents and travel agencies. In June 2000, a travel agent other than petitioners filed an action on behalf of a putative nationwide class of travel agents alleging that several airlines, including respondents here, violated Section 1 of the Sherman Act by unlawfully conspiring to reduce certain commissions historically paid by airlines to travel agents. *Hall* v. *United Air Lines, Inc.*, 296 F. Supp. 2d 652, 657 (E.D.N.C. 2003).

Defendants in *Hall* moved to dismiss on the grounds that various amended complaints did nothing more than allege parallel conduct coupled with a bald assertion that such conduct was the result of a conspiracy. The district court denied the motions to dismiss, relying on *Conley* v. *Gibson*, 355 U.S. 41, 45–46 (1957), for the proposition that dismissal "is proper only if it appears beyond reasonable doubt that the plaintiff can prove no set of facts in support of her claim that would entitle her to relief." Order Denying Motion to Dismiss at 3, *Hall* v. *United Air Lines, Inc.*, No. 7:00-CV-123-BR(1) (E.D.N.C. Feb. 21,

[1] Because Delta Air Lines, Inc. is no longer a party (see Pet. iv), in this Court the case is properly captioned—as reflected on the cover of this brief—*Tam Travel, Inc., et al.* v. *American Airlines, Inc., et al.* See S. Ct. R. 34.1(c).

2001). After "months of depositions, interrogatories, and requests for production of documents[,]" *Hall*, 296 F. Supp. 2d at 662, aff'd per curiam sub nom., *Hall* v. *Am. Airlines, Inc.*, 118 F. App'x. 680 (4th Cir. 2004), the district court granted summary judgment in favor of the defendant airlines, *id.* at 680–81, stating that defendants had offered "overwhelmingly compelling evidence that the commission cuts and caps that are the subject of this litigation were just as likely the result of competitive conduct and natural changes in the market as of the illegal conspiracy alleged by plaintiffs." *Id.* at 671.

Petitioners timely opted out of the class certified in *Hall* and filed this action in April 2003. Respondent airlines answered the original complaint without moving to dismiss. As discovery was being conducted, this Court decided *Bell Atlantic Corp.* v. *Twombly*, 550 U.S. 544 (2007). Respondent airlines moved for judgment on the pleadings under Federal Rule of Civil Procedure 15. The district court granted the motion.

Petitioners filed an amended complaint, which among other things alleged that a former American Airlines executive, Michael W. Gunn, testified that "'industry consensus' on new commission levels was necessary for the commission cuts and caps to hold." App. 111a, ¶ 87. The amended complaint also alleged that several airlines, including respondent United Air Lines, Inc. ("United"), entered Chapter 11 bankruptcy between 2002 and 2005 and, upon emerging from bankruptcy, "had knowledge" of the alleged conspiracy, did not "undertake[] any action to affirmatively disavow" the conspiracy, and "ratified" the alleged conspiracy by "conforming to the commission

levels and caps to which their co-conspirators had agreed." App. 118a, ¶¶ 117–119.

Respondent airlines moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). In support of the motion, respondent airlines submitted the transcript of Mr. Gunn's deposition. At oral argument, petitioners' counsel consented to the district court's consideration of the deposition transcript. Addendum to Proof Brief of Appellees, Record Entry No. 176 at 59–60, *Tam Travel, Inc.* v. *Delta Air Lines, Inc.*, No. 07-4464 (6th Cir. June 26, 2008).

The district court dismissed the action. App. 71a. Petitioners timely appealed. The court of appeals affirmed, holding that: (i) "plaintiffs have failed to allege sufficient facts plausibly suggesting (not merely consistent with) an agreement in violation of § 1 of the Sherman Act because defendants' conduct 'was not only compatible with, but indeed was more likely explained by, lawful, unchoreographed free-market behavior'"; and (ii) United's continuation of its 0% commission policy after emerging from bankruptcy proceedings was not an overt act by which United rejoined the alleged conspiracy. App. 26a (quoting *Ashcroft* v. *Iqbal*, 556 U.S. ___, 129 S. Ct. 1937, 1950 (2009)); App. 11a–12a.

Petitioners filed a petition for rehearing en banc, which the court of appeals denied. App. 72a–73a.

DISCUSSION

This case presents two questions, neither of which requires intervention by this Court. The first question presented is whether, in assessing "what a plaintiff must plead in order to state a claim under § 1 of the Sherman Act," the court of appeals correctly applied this Court's decision in *Twombly*. The

second question is whether confirmation of a defendant's bankruptcy plan discharges an antitrust claim that is predicated on pre-confirmation conduct.

A. The Court Should Not Grant Review To Revisit The Question Decided in *Twombly*

In *Twombly*, this Court held that stating a § 1 claim "requires a complaint with enough factual matter (taken as true) to suggest that an agreement was made." 550 U.S. at 556. Further, "when allegations of parallel conduct are set out in order to make a § 1 claim, they must be placed in a context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action." *Id.* at 557. Complaints therefore must contain "allegations plausibly suggesting (not merely consistent with) agreement." *Ibid.*

Petitioners claim that the decision in *Starr* v. *Sony BMG Music Entertainment*, 592 F.3d 314 (2d Cir. 2010), conflicts with the decision of the court of appeals below. In particular, petitioners point to the *Starr* court's rejection of a rule that to survive a motion to dismiss, a complaint alleging a violation of § 1 must allege facts that tend to exclude the possibility of independent action. Pet. 23, quoting *Starr*, 592 F.3d at 325 ("Defendants first argue that a plaintiff seeking damages under Section 1 of the Sherman act must allege facts that 'tend[ ] to exclude independent self-interested conduct as an explanation for defendants' parallel behavior.' * * *. This is incorrect.") (citation omitted).

There is no conflict among the circuits, however, because the court of appeals below did *not* adopt the rule rejected in *Starr*. Petitioners' claims of a conflict

rest entirely on their recasting of the court of appeals' holding.

For example, petitioners claim that the court of appeals held:

> [I]f a complaint satisfies *Twombly* by alleging facts placing the defendants' parallel behavior "in a context that raises a suggestion of preceding agreement," *Twombly*, 550 U.S. at 557, the complaint must nevertheless be dismissed unless it also "tends to exclude the possibility of independent action." App. 22a (citing *Monsanto Co.* v. *Spray-Rite Serv. Corp.*, 465 U.S. 752, 768 (1984)).

Pet. 18. But nowhere on the cited page of the appendix does the court of appeals announce a rule that if a complaint satisfies the standards set forth in *Twombly* it must nevertheless be dismissed unless it also satisfies an additional requirement that it allege facts tending to exclude the possibility of independent action. Instead, the court of appeals simply and correctly identified *Monsanto* as the case in which this Court "established the modern standard to evaluate evidence bearing on concerted action." App. 22a.

Further, the portion of the court of appeals' opinion cited by petitioners is not the court of appeals' holding. As petitioners elsewhere acknowledge (see Pet. 16, 24), the court of appeals' actual holding appears at App. 26a:

> We therefore hold that plaintiffs have failed to allege sufficient facts plausibly suggesting (not merely consistent with) an agreement in violation of § 1 of the Sherman Act because defendants' conduct "was not only compatible with,

> but indeed was more likely explained by, lawful, unchoreographed free-market behavior."

App. 26a (quoting *Iqbal*, 129 S. Ct. at 1950).[2]

This language, too, does not announce a rule that a complaint must allege facts that tend to exclude the possibility of independent action in order to survive a motion to dismiss for failure to state a claim or for judgment on the pleadings under Federal Rule of Civil Procedure 12(b)(6) or (c). Nor does it represent an improper application of the standard applicable at summary judgment.[3] Rather, quoting *Iqbal* and using language straight out of *Twombly*—"plausibly suggesting (not merely consistent with)" agreement, cf. 550 U.S. at 557—the court of appeals did just what this Court did in *Twombly*. It assessed whether allegations that defendants' parallel conduct was inconsistent with their unilateral economic incentives

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[2] Petitioners purport to quote the court of appeals' holding twice. The first time, they leave out quotation marks in the original and make no reference to the fact that the court of appeals was quoting from *Iqbal*. Compare Pet. 16 with App. 26a. The second time, they replace some of the language from *Iqbal* with an ellipsis and assert that the court of appeals "misquoted the relevant part" of *Iqbal*. Pet. 24.

[3] Petitioners assert that "[a]cademic observers have also concluded that this case erroneously applied the summary judgment standard." Pet. 23 n.7, citing Lee Goldman, *Trouble for Private Enforcement of the Sherman Act: Twombly, Pleading Standards, and the Oligopoly Problem*, 2008 B.Y.U.L.Rev. 1057, 1090. The cited article refers to the district court's opinion, however, and does not mention the decision of the court of appeals. See Goldman, 2008 B.Y.U.L.Rev. at 1090.

plausibly suggested (and was not merely consistent with) agreement.[4]

In *Twombly*, plaintiffs alleged that local telephone companies had natural economic incentives to expand into one another's historic territories following a change in regulatory policy and their parallel failure to do so was "strongly suggestive of conspiracy." 550 U.S. at 567. This Court rejected the *Twombly* plaintiffs' logic, observing that "an obvious alternative explanation" and a "natural explanation for the noncompetition alleged is that the former Government-sanctioned monopolists were sitting tight, expecting their neighbors to do the same thing." *Id.* at 567–68.

Here, the amended complaint alleges that it would be against an airline's economic self-interest to attempt to cut its costs without first colluding with its competitors because whichever airline moved first would lose revenue to its rivals. App. 109a–112a, ¶¶ 81–89. Just as this Court assessed the allegations in *Twombly* regarding the telephone companies' economic incentives, the court of appeals assessed petitioners' allegations of an airline's economic incentives. The court of appeals determined that it was natural for an airline to seek to reduce its costs and that the risk of lost revenue was far outweighed by the magnitude of the potential savings. See App. 24a–30a.

Although the court of appeals cited to *Monsanto* and to its decision in *Re/Max International, Inc.* v. *Realty One, Inc.*, 173 F.3d 995 (6th Cir. 1999), apply-

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[4] Like the district court, the court of appeals also considered the transcript of a deposition expressly referenced in the first amended complaint. See App. 27a–29a.

ing the *Monsanto* standard, it was careful to note that *Re/Max* "was an appeal from a grant of summary judgment. Here, our review is constrained by Fed. R. Civ. P. 12(b)(6)." App. 23a n.7.

Thus, the court of appeals' decision simply applies the standards set forth in *Twombly* and *Iqbal* to a different set of facts. It does not present the first question petitioners ask this Court to consider—whether a complaint must allege facts that "tend to exclude the possibility that defendants acted independently."[5] And petitioners fail to demonstrate an urgent need for the Court to revisit the issues decided in *Twombly* and *Iqbal*.

Further, even if there were a reason to revisit the issues decided in *Twombly* and *Iqbal*, the odd procedural posture of this case makes it a poor vehicle for developing guidance to the lower courts on how to interpret and apply those precedents. When drafting the amended complaint, petitioners had the unusual benefit of full discovery from the *Hall* action, plus additional discovery in this action. These are far from the circumstances under which most complaints alleging a violation of § 1 are drafted and assessed.

In addition, when the motion to dismiss was argued before the district court, petitioners consented

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[5] While there is much to commend a rule that a § 1 complaint must allege facts that tend to exclude the possibility of independent action, this case does not provide a good vehicle for the Court to consider whether to adopt such a rule. Unlike in *Starr*, where defendants expressly argued for adoption of such a rule, respondent airlines here did not even cite *Monsanto* in their brief below. And when respondent airlines cited to *Re/Max* they made no mention of the "tends to exclude" standard. Brief of Defendants-Appellees at 29, 61–62, *Tam Travel*, No. 07-4464 (6th Cir. June 26, 2008).

to the court's consideration of the transcript of a deposition already taken in this action. Under Federal Rule of Civil Procedure 12(d), a district court's consideration of discovery material or other "matters outside the pleadings" normally means that "the motion must be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12(d). The oddity of the procedural setting here—in which the courts below applied the standard applicable to motions to dismiss even though "[t]he district court reviewed [a former airline employee's] deposition testimony in its entirety and carefully considered all of the factual allegations which, taken as true, could plausibly imply that defendants entered into a preceding agreement," App. 28a—makes this atypical case a particularly poor candidate for addressing any questions regarding the application of *Twombly* and *Iqbal* because Rule 12(d) would normally require application of the Rule 56 summary judgment standard in similar circumstances.

B. There Is No Reason For This Court To Review The Sixth Circuit's Decision Concerning the Effect Of United Air Lines' Bankruptcy.

Petitioners also ask the Court to review the Sixth Circuit's holding that confirmation of United's bankruptcy plan in January 2006 discharged their claims against United. Petitioners mistakenly claim that the issue is "independently worthy of review." Pet. 30. In fact, the bankruptcy issue cannot even be reached unless this Court also grants review of the first question presented and reverses the Sixth Circuit's application of the *Twombly* standard. The lower court's dismissal of the complaint for failure to satisfy the *Twombly* standard encompasses petitioners' claims against United. Thus, absent reversal on the

Twombly issue, those claims remain subject to dismissal regardless of the impact of United's bankruptcy.

In any event, certiorari is unwarranted on the bankruptcy issue because there is no conflict between the Sixth Circuit's holding and any decision of either this Court or any court of appeals. Indeed, even Judge Merritt's dissenting opinion took no issue with the panel's unremarkable holding that confirmation of a bankruptcy plan discharges claims that are dependent on pre-confirmation acts. Notably, neither the majority nor Judge Merritt suggested the existence of a division among the courts of appeals on this issue, and for good reason: no such division exists.

Striving mightily to conjure a conflict where none exists, petitioners assert (Pet. 32–33) that the Sixth Circuit's holding with respect to the effect of United's bankruptcy conflicts with the Fourth Circuit's decision in *In re Cotton Yarn Antitrust Litigation*, 505 F.3d 274 (4th Cir. 2007), and the Eleventh Circuit's decision in *Morton's Market, Inc.* v. *Gustafson's Dairy, Inc.*, 198 F.3d 823 (11th Cir. 1999).[6] But, significantly, neither *In re Cotton* nor *Morton's Market*—nor, for that matter, this Court's decision in *Klehr* v. *A.O. Smith Corp.*, 521 U.S 179 (1997), which petitioners also cite—involved the effects of a defen-

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[6] Although petitioners refer to a supposed conflict with the "Fourth and Eighth Circuits" (Pet. 30), they cite no Eighth Circuit decision. In fact, as we explain, the Eighth Circuit's decision in *International Paper Co.* v. *MCI WorldCom Network Services, Inc.*, 442 F.3d 633 (8th Cir. 2006) (per curiam), rejected the very theory upon which Petitioners rely. See *infra* at 13.

dant's bankruptcy. Instead, each of those cases concerned statute-of-limitations issues.[7]

Although the concept of claim accrual is common to both bankruptcy law and the principles governing statutes of limitations, it is well-established that "statute of limitations cases do not concern the same issues or the same principles" as cases, such as this, that involve the question of when a claim accrues "for bankruptcy purposes." *In re Edge*, 60 B.R. 690, 699 (Bankr. M.D. Tenn. 1986); see also *In re Envirodyne Indus., Inc.*, 214 B.R. 338, 350 n.3 (N.D. Ill. 1997); *In re Wis. Barge Lines, Inc.*, 91 B.R. 65, 67–68 (Bankr. E.D. Mo. 1988); cf. *Cusano* v. *Klein*, 264 F.3d 936, 947 (9th Cir. 2001) (distinguishing claim accrual for bankruptcy purposes from claim accrual for statute of limitations purposes); *In re Alvarez*, 224 F.3d 1273, 1276 n.7 (11th Cir. 2000) (same); *In re Swift*, 129 F.3d 792, 796 (5th Cir. 1997) ("These are two separate and distinct issues aimed at very different problems."). Thus, the mere fact that an antitrust claim may, by virtue of an "overt act," accrue at one time for statute-of-limitations purposes does not mean that the claim necessarily accrues at the same time for bankruptcy purposes.

The distinction between claim accrual for statute-of-limitations purposes and claim accrual for

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[7] Moreover, the statute-of-limitations discussion in *In re Cotton*—a case involving the enforceability of certain arbitration agreements—was mere dictum insofar as the court held that "[q]uestions about the timeliness of the action * * * will * * * be determined by the district court on remand." 505 F.3d at 292. Similarly dictum is the statement regarding overt acts and the statute of limitations that petitioners quote (Pet. 32) from *Klehr*, a civil RICO case that referred to antitrust actions only by analogy.

bankruptcy purposes arises from the fundamentally different policy considerations that animate the two areas of law. Statutes of limitations look backwards as "practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost." *Chase Secs. Corp.* v. *Donaldson*, 325 U.S. 304, 314 (1945). The bankruptcy laws, by contrast, look forward, to provide the reorganized entity with a "fresh start" free from the burden of "further liability for old debt." *Cent. Va. Cmty. Coll.* v. *Katz*, 546 U.S. 356, 364 (2006). Accordingly, in the bankruptcy context, "[i]t is important * * * to distinguish principles of accrual from principles * * * which may cause the statute of limitations to begin to run after accrual has occurred." *Cusano*, 264 F.3d at 947; see also *In re Alvarez*, 224 F.3d at 1276 n.7 (law governing running of the statute of limitations "is irrelevant" to claim accrual in the bankruptcy context). In practice, "the dates of [claim] accrual and the start of the running of the statute of limitations may vary greatly." *In re Swift*, 129 F.3d at 796; *In re Alvarez*, 224 F.3d at 1276 n.7. There is, therefore, no direct conflict between the Sixth Circuit's bankruptcy holding and the statute-of-limitations cases on which petitioners rely.

Implicitly recognizing the lack of any on-point bankruptcy authority to support their theory, petitioners attempt to bridge the gap with the Ninth Circuit's decision in *O'Loghlin* v. *County of Orange*, 229 F.3d 871 (9th Cir. 2000), which they contend "specifically applied the continuing violation doctrine to a violation that straddled the bankruptcy period, as here." Pet. 36. But petitioners misconstrue *O'Loghlin*—a case on which the Sixth Circuit actual-

ly relied in reaching its holding below. App. 10a. Unlike petitioners, who assert an antitrust claim that necessarily depends in large part on pre-bankruptcy conduct (see, *e.g.*, Compl. ¶¶ 26–108 (App. 93a–117a)), the plaintiff in *O'Loghlin* asserted claims under the Americans with Disabilities Act ("ADA") based on distinct pre- and post-discharge events that each *independently* fulfilled the elements of an ADA claim.[8] The Ninth Circuit held that the continuing nature of the violations did not prevent the defendant from being held liable for its post-discharge conduct because the defendant "would clearly be liable for a violation in the post-discharge period" without reference to its alleged "violat[ion of] the ADA during the pre-discharge period." 229 F.3d at 874–75. Here, by contrast, United's alleged post-discharge acts do not even arguably support a claim of an antitrust conspiracy unless they are combined with the allegations of United's pre-discharge conduct.

The circuits that have actually considered petitioner's "continuing violation" theory have rejected it and instead reached a conclusion similar to that of the Sixth Circuit in this case. For example, the Eighth Circuit in *International Paper Co.* v. *MCI WorldCom Network Services, Inc.* held that a bankruptcy confirmation discharged not only pre-confirmation claims for trespass based on the defendant's installation of fiber-optic cables on the plaintiff's land, but also post-discharge claims for a "continuing trespass" based on the defendant's continued use of the cables after confirmation. 442 F.3d 633,

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[8] O'Loghlin "allege[d] three separate episodes," the third of which occurred "after discharge" of the defendant's debts. *O'Loghlin*, 229 F.3d at 873.

635–36 (8th Cir. 2006) (per curiam). The Second Circuit in *In re WorldCom* recently held in a similar context that the "expansive scope of the Bankruptcy Code's definition of 'claim,'" combined with the lack of any relevant post-confirmation conduct aside from the defendant's "failure to remedy the trespass by removing the cables," mandated that any continuing trespass "claim was discharged by confirmation of [the defendant's] plan of reorganization." 546 F.3d 211, 220–21 & n.7 (2d Cir. 2008). The Second Circuit found *O'Loghlin* inapposite for the same reason that the case is inapplicable here: it involved liability for independent, post-discharge illegal conduct rather than the mere failure to reverse the effects of pre-discharge decisions. *Id.* at 221. In any event, even if *O'Loghlin* were on point, the Ninth Circuit considered it a "case of first impression" without any other "case precisely on point in this circuit or elsewhere." 229 F.3d at 874. To the extent any conflict could be construed, review should be withheld until other circuits have considered the issue.

Finally, petitioners' theory, even if indulged, fails on its own terms. Petitioners take issue with the Sixth Circuit's holding that the last overt act in the alleged conspiracy "occurred in 2002, long before United emerged from bankruptcy." App. 11a. According to petitioners (Pet. 31), United's failure to pay commissions after emerging from bankruptcy constitutes overt action in a "continuing violation," thereby allegedly creating post-discharge liability under *Klehr* and its progeny. But that argument is belied by the complaint, in which petitioners allege that United's failure to pay commissions after confirmation of its bankruptcy plan merely "ratified" and failed to "affirmatively disavow" the purported pre-discharge conspiracy. Compl. ¶¶ 118–119 (App.

118a). As Petitioners acknowledged before the Sixth Circuit, their theory is that United's failure to pay commissions after the discharge "reaffirmed its participation in the continuing conspiracy" that began before confirmation. Pet. for Reh'g at 14. That very theory was squarely rejected in *DXS, Inc.* v. *Siemens Medical Systems, Inc.*, 100 F.3d 462 (6th Cir. 1996), a case upon which *Klehr* relied for its summary of the law governing continuing antitrust violations. See *Klehr*, 521 U.S. at 189 (citing *DXS*). *DXS* restated the well-established principle that to give rise to a new cause of action (even for limitations purposes), an overt act "must be a new and independent act that is *not merely a reaffirmation of a previous act.*" 100 F.3d at 467 (emphasis added; internal quotation marks omitted); see also, *e.g.*, *Kaw Valley Elec. Coop.* v. *Kansas Elec. Power Coop.*, 872 F.2d 931, 933 (10th Cir. 1989); *Pace Indus., Inc.* v. *Three Phoenix Co.*, 813 F.2d 234, 238 (9th Cir. 1987). Thus, far from conflicting with the decision in this case, *Klehr* and its progeny rely on a line of authority holding—as did the panel below—that the "unabated inertial consequences" of a previous act do not cause a new claim to accrue. *DXS*, 100 F.3d at 467 (internal quotation marks omitted).

As the Sixth Circuit recognized, petitioners' continuing violation theory would lead to an "infinite" limitations period under which "an antitrust plaintiff could routinely salvage an otherwise untimely claim by asserting that it continues to lose revenue because of past alleged anticompetitive conduct." App. 11a–12a. Petitioners' theory would also reduce the "fresh start" promise of bankruptcy to a nullity by permitting plaintiffs to resurrect long-extinguished claims based on allegations that a debtor's post-discharge inaction somehow reaffirms or fails to remedy pre-

discharge conduct. Because petitioners find no support in existing law, and because the panel's decision does not conflict with any decision of this Court or any court of appeals, review of the bankruptcy issue is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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